

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**BANK OF AMERICA, N.A.**

**RESPONDENT,**

**v.  
GARY REYNOLDS, INDIVIDUALLY  
AND d/b/a GARY REYNOLDS FARMS**

**APPELLANT.**

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DOCKET NUMBER WD73370

DATE: September 27, 2011

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Appeal From:

Lafayette County Circuit Court  
The Honorable Randall W. Shackelford, Judge

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Appellate Judges:

Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

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Attorneys:

Richard Milone, Leawood, KS, for respondent.

John H. Edmiston, Warrensburg, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
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**BANK OF AMERICA, N.A.,**

**RESPONDENT,**

**v.**

**GARY REYNOLDS, INDIVIDUALLY  
AND d/b/a GARY REYNOLDS FARMS,**

**APPELLANT.**

No. WD73370

Lafayette County

Before Division Two: Thomas H. Newton, Presiding Judge, Cynthia L. Martin, Judge and Gary D. Witt, Judge

Gary Reynolds appeals the trial court's entry of summary judgment against him in favor of Bank of America on its action to collect on a credit card debt.

**REVERSED AND REMANDED.**

**DIVISION TWO HOLDS:**

Bank of America filed suit against Gary Reynolds claiming he had breached a contract with them by failing to pay on a credit card issued to Gary Reynolds Farms. Reynolds denied all knowledge of the agreement and expenses on the credit card. The Bank filed a motion for summary judgment, which was granted by the trial court. Attached to that motion for summary judgment were an unverified Platinum Visa Business Card Company Statement, the unverified Bank of America Visa Business Credit Card Disclosure, and a copy of a bank employee's affidavit stating certain documents were business records but with no documents attached.

In his sole point on appeal Reynolds argues that the trial court erred in granting summary judgment because there was a genuine issue of material fact in dispute. We agree. Before a plaintiff is entitled to summary judgment he must prove his prima facie case. The exhibits attached to the motion for summary judgment are not admissible into evidence. First, there is no evidence that the records are admissible business records. They are not signed or supported by affidavit, deposition, or other sworn testimony. The affidavit of the bank employee is of no use because the documents he claims are business records are not attached to the affidavit. Further, the credit card was issued to Gary Reynolds Farms and Gary Reynolds contests that the card was issued to him. There is no evidence in the record to connect Gary Reynolds Farms to Gary Reynolds and this in itself constitutes a genuine issue of material fact in dispute.

Point is granted. Cause is reversed and remanded for further proceedings.

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